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NATIONAL MONUMENTS

Think tank files FOIA bid for Antiquities Act correspondence

Kellie Lunney, E&E News reporter
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Bears Ears protesters



The Center for American Progress has filed Freedom of Information Act requests for all correspondence between the Trump administration and outside groups related to reforming the Antiquities Act. The administration has launched a review of 27 national monument designations, including Bears Ears. Photo by Jennifer Yachnin.

A progressive think tank has filed Freedom of Information Act requests with the Justice Department for all correspondence between the Trump administration and outside interests related to the Antiquities Act.

The Center for American Progress sent two FOIA letters to the department yesterday: a [request for](#)

documents and correspondence that "mention, describe, refer to, or relate to a request or effort to revisit rescind, amend, or revoke" a 2000 DOJ opinion that the president has the authority to establish a national marine monument and **information** on any Antiquities Act correspondence between DOJ's Office of Legal Counsel and scholars who disagree with a 1938 opinion limiting the president's authority over federal land.

The FOIA letters specifically ask for Jan. 20 correspondence between DOJ officials and the Pacific Legal Foundation's Todd Gaziano and American Enterprise Institute legal scholar John Yoo.

The two released an analysis in March aimed at deconstructing past legal advisories finding that while the 1906 Antiquities Act permits presidents to designate national monuments to protect scientific or historic artifacts, it doesn't allow commanders in chief to revoke the status of monuments.

"An attorney general opinion in 1938 concluded that the statutory power granted to the president to create national monuments does not include the power to revoke prior designations," the two wrote. "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power."

CAP also wants any documents and correspondence that discuss or summarize that report.

"We have reason to believe that the Department of Justice is the subject of pressure to revise a longstanding legal opinion related to the Antiquities Act," said Kate Kelly, CAP's public lands director. "The American public needs to know if there's something going on behind closed doors to undermine our national parks, public lands and waters."

Mary Ellen Kustin, the policy director of the group's public lands project who filed the FOIA requests, said today DOJ had not confirmed yet that it had received the letters.

The department did not immediately respond to questions about the FOIA filings.

The request for information comes as Interior Secretary Ryan Zinke finishes his trip out West this week talking to stakeholders and visiting national monuments, including Utah's Bears Ears and Grand Staircase-Escalante. The trip is part of the department's 120-day review of 27 monument designations going back decades under the Antiquities Act.

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